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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/808,742	03/14/2001	Gary Leeds	11273.12.1	4366

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EXAMINER
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STIMPAK, JOHNNA

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 06/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/808,742

Applicant(s)

LEEDS ET AL.

Examiner

Johnna R. Stimpak

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 April 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The following is a final office action upon examination of application number 09/808,742. Claims 1-19 are pending and have been examined on the merits discussed below.

#### ***Response to Arguments***

2. Applicant's arguments filed 4/15/05 have been fully considered but they are not persuasive. With respect to Applicant's argument that Summerell et al does not teach a plurality of end users providing personal data to the website to be analyzed to allow treatment exercises to be prescribed, Examiner respectfully disagrees. The method and system in Summerell et al is directed to providing information to users to adopt and maintain healthy behaviors. As recited in column 3, lines 4-7, information is collected from user(s) related to factors that affect their wellness. This statement proves that this method and system is used for more than one end user. Each user enters their specific information to be analyzed within the system. Therefore based on these comments, the previous rejections have been modified to include rejections for the claims as newly amended.

3. In response to applicant's argument that Summerell et al neither teaches nor suggests the use of the website, website provider or Internet connection to collect and review medical data, Examiner disagrees. Summerell et al explicitly teaches the invention can be accessed through either an internet or intranet therefore it is inherent to Summerell et al that a website or Internet connection is used to collect and review the data.

4. In response to Applicant's arguments to the rejection of claims 9, 14 and 19 under 35 USC 103(a), Examiner respectfully disagrees. Methods of storing data such as CD or videotape

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are old and well known in the arts as a way to store data in a convenient manner to preserve the data. Since the planner recommendations in Summerell et al are saved for retrieval by the user and the user can select different options by which to retrieve the information, it would be obvious to include CD or videotape as a means to distribute the information. Prior rejections are upheld.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 1-8, 10-13, and 15-18 rejected under 35 U.S.C. 102(a and e) as being anticipated by Summerell, US 5,937,387.

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As per claim 1 (amended), Summerell teaches establishing a worksite wellness website, the worksite wellness website being operated and maintained by an intermediary in cooperation with a provider (column 8, lines 4-7 – system accessed through internet; column 9, lines 26-31 – user data is collected and wellness plan recommendations are given); selectively providing personal data by a first end user to the worksite wellness website through a first worksite (column 9, lines 15-25 – personal profile questionnaire includes a health profile questionnaire); reviewing the personal data of the first end user on the worksite wellness website (column 11, lines 36-42 – once data is collected system proceeds to planner recommendations); selectively inputting personal data by a second end user to the worksite wellness website through a second worksite (column 9, lines 15-25 – personal profile questionnaire includes a health profile questionnaire – inherently the system is set up in a way that a plurality of users can enter personal data (see column 3, lines 4-7) and given that the Internet is taught as being used to collect information it is inherent that each user could be at different worksites while entering data); analyzing the personal data of the second end user on the worksite wellness website (figures 18, 19 – wellness plan for each user is determined depending on data collected – inherently the system is set up in a way that a plurality of users can enter personal data – see column 3, lines 4-7); selectively prescribing a plurality of treatment exercises developed by a medical expert for use at the worksite wellness website, wherein the plurality of treatment exercises are responsive to the reviewing and analyzing steps (column 11, lines 36-42 – once data is collected system proceeds to planner recommendations); incorporating the personal data of the first end user and the plurality of treatment exercises to establish a personal occupational program for use by the first end user (figures 18, 19 – wellness plan for each user is determined

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depending on data collected); and retrieving the personal occupational program from the worksite wellness website through the intermediary by the first end user at the first worksite (column 8, lines 4-7 – system accessed through internet; column 9, lines 26-31 – user data is collected and wellness plan recommendations are given).

As per claim 2 (amended), Summerell teaches the step of validating the personal occupational program for adaptation by the first end user (column 17, lines 15-31 – once the list of options are chosen based on the data entered by the user, the user can select one or more of the options to form a wellness plan).

As per claim 3, Summerell teaches the step of modifying the personal occupational program in response to the validating step and the reviewing step (column 17, lines 15-31 – once the list of options are chosen based on the data entered by the user, the user can select one or more of the options to form a wellness plan).

As per claim 4 (amended), Summerell teaches the modifying step is accomplished by the first end user (column 17, lines 15-31 – once the list of options are chosen based on the data entered by the user, the user can select one or more of the options to form a wellness plan).

As per claim 5, Summerell teaches the modifying step is accomplished by the medical expert (column 5, lines 60-67 – a physician can review and update or modify the patient data).

As per claim 6, Summerell teaches the personal occupational program includes a prevention section and a rehabilitation section (figures 18, 19 – wellness program includes recommendations for improving wellness, inherently these recommendations includes preventative and rehabilitative recommendations).

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As per claim 7, Summerell teaches the prevention section has information pertaining to selected subject areas, and wherein the subject areas are selected from a group including, education, activities of daily living, exercise and specific work safe activities (figure 18 – user is instructed to take preventative steps such as reduce stress and exercise).

As per claim 8 (amended), Summerell teaches the rehabilitation section includes the plurality of treatment exercises prescribed by the medical expert for use by the first end user, and further includes information pertaining to selected subject areas, and wherein the subject areas are selected from a group including education, activities of daily living, exercise and safe work activities (figure 18 – user is instructed to make rehabilitative changes such as stop smoking, lower cholesterol, reduce blood pressure, etc.).

Claim 10 is directed to the system for performing the method of claim 1. Since Summerell teaches the use of a computerized system (column 7, line 48 – column 8, line 29), claim 10 is therefore rejected under the same rejection as claim 1.

Claim 11 is directed to the system for performing the method of claim 6. Since Summerell teaches the use of a computerized system (column 7, line 48 – column 8, line 29), claim 11 is therefore rejected under the same rejection as claim 6.

Claim 12 is directed to the system for performing the method of claims 7 and 8. Since Summerell teaches the use of a computerized system (column 7, line 48 – column 8, line 29), claim 12 is therefore rejected under the same rejection as claims 7 and 8.

As per claim 13 (amended), Summerell teaches the rehabilitation section includes the plurality of treatment exercises prescribed by the medical source for the first end user to perform (fig 18, 19 – user is instructed to perform specific exercises based on data collected).

As per claim 15 (amended), Summerell teaches customizing the worksite wellness program into a personal occupational program with personal data inputted by a first end user and other end users at a plurality of worksites (column 8, lines 4-7 – system accessed through internet; column 9, lines 26-31 – user data is collected and personalized wellness plan recommendations are given based on data collected; inherently the system is set up in a way that a plurality of users can enter personal data (see column 3, lines 4-7)); retrieving the personal occupational program data of the user by a medical expert through the provider (fig 18 and 19 – personalized wellness program data is retrieved; column 5, lines 60-67 – a physician can review the patient data); selectively prescribing a plurality of treatment exercises in the personal occupational program to the first end user developed by the medical expert (fig 18 and 19 – user is instructed to perform specific exercises based on information collected); and selectively modifying the personal occupational program by the first end-user and the medical expert (column 17, lines 15-31 – once the list of options are chosen based on the data entered by the user, the user can select one or more of the options to form a wellness plan).

As per claim 16, Summerell teaches the personal occupational program includes a prevention section and a rehabilitation section (figures 18, 19 – wellness program includes recommendations for improving wellness, inherently these recommendations includes preventative and rehabilitative recommendations).

As per claim 17, Summerell teaches the prevention section and the rehabilitation section have information pertaining to selected subject areas, and wherein the subject areas are selected from a group including, education, activities of daily living, exercise and specific work safe activities (figure 18 – user is instructed to take preventative steps such as reduce stress and



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exercise; user is instructed to make rehabilitative changes such as stop smoking, lower cholesterol, reduce blood pressure, etc.).

As per claim 18, Summerell teaches the rehabilitation section includes the plurality of treatment exercises prescribed by the medical source for the particular end user to perform (fig 18, 19 – user is instructed to perform specific exercises based on data collected).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 9, 14 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Summerell, US 5,937,387.

As per claims 9 and 19, Summerell teaches the retrieving step is accomplished by deliverables, and wherein the deliverables are selected from a group including streaming over the internet, and printing a handout (column 16, lines 51-61) but does not explicitly teach deliverables including ordering a videotape, and ordering a CD. However, it is old and well known to collect data onto CD or videotape for better preservation of the data. It would have been obvious to one of ordinary skill in the art at the time of the invention to include deliverables such as CD or videotape because the advantage of using CD or videotape allows one to save the information in a more secure way.

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Claim 14 is the system for performing the method of claim 9. Since Summerell teaches the use of a computerized system (column 7, line 48 – column 8, line 29), claim 14 is rejected under the same rejections for claim 9.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Cummings, Jr. – US 5,301,105 – all care health management system

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Johnna R. Stimpak whose telephone number is 571-272-6736.

The examiner can normally be reached on M-F 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 571-272-6729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JS  
6/17/2005

  
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